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State treasurer against levies on local funds

PHOENIX — State Treasurer Dean Martin wants a judge to rule against him and Gov. Janet Napolitano in a lawsuit brought by cities to overturn a raid by the state on their funds.

Martin, in a letter Monday to state Solicitor General Mary O'Grady, said the decision by lawmakers and the governor to take nearly \$30 million from the cities is unconstitutional. He agreed with the cities that sued, contending it takes a two-thirds vote of the Legislature to pass anything that increases state revenues.

His directive to O'Grady actually puts Martin in the position of arguing against himself, at least from a legal perspective. The lawsuit, filed by the League of Arizona Cities and Towns, asks the Arizona Supreme Court to block Martin from assessing the cities for the money.

But Martin's objections to the way lawmakers and the governor balanced the \$9.9 billion budget do not end with the protests about raiding city and county funds.

He also wants O'Grady to ask the state Supreme Court to void the \$165 fine that lawmakers decided to impose on drivers caught speeding by the state's new photo radar system, calling the levy "basically a tax on speeding," because the offense is not a crime and the revenues go into the state treasury. That, Martin said, also requires a two-thirds vote of the Legislature.

And he also wants the high court to kill a new \$45 fee on motorists who attend "defensive-driving" school.

Gubernatorial press aide Shilo Mitchell did not respond to questions about why Napolitano, who was instrumental in crafting the budget, felt it was appropriate to take nearly \$30 million from the cities and counties.

"This is currently before the courts," Mitchell said. "We will await their decision."

O'Grady said through a spokeswoman that she is studying Martin's letter but has not decided what to do.

Faced with declining tax revenues, the governor and lawmakers made some spending cuts in the new budget. But they also used various methods of generating more money, including the hit to cities and counties.

The \$9.9 billion budget specifically requires cities, towns and counties to collectively put \$29,748,400 into the state treasury. The amount each owes is directly related to the amount of money it gets from the state through gasoline taxes and vehicle-registration fees.

Of that total, about \$18.3 million is divided up among the cities, with the balance allocated among the 15 counties.

Chandler Mayor Boyd Dunn said cities are willing to help the state deal with its deficit. But he said allowing the Legislature to unilaterally raid funds earmarked for local communities sets a bad precedent.

The Arizona Constitution requires a two-thirds vote of the Legislature for anything that results in a net increase in state revenues. It specifically includes new taxes, fees or assessments.

Attorney Paul Eckstein, who represents the cities, said the requirement for Martin to take \$29.7 million from money that otherwise would go to his clients is an assessment increasing the money going into the treasury. Martin agreed.

"The constitution is very clear: When the government wants to raise revenues, it needs a two-thirds vote," he said. The fact that lawmakers simply directed that cities and counties transfer the money into the general fund does not change that, he added.

Martin said he sees nothing wrong with asking the Supreme Court to side with the cities and against him.

"We're going to lose this thing," he said of the lawsuit. "There's no sense in fighting this thing and spending hundreds of thousands, or millions, of dollars on legal fees just to lose something."

Martin said there is another flaw in the bid to tap the funds of cities and counties. He said new taxes legally have to be enacted as separate pieces of legislation, not rolled into the state budget.

The Supreme Court is due to consider whether to take the case in January.

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